

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

UNITED STATES and LOANCARE, LLC,

Plaintiffs,

v.

STEVEN WEINER, et al.,

Defendants.

Civil Action No. 18-16034 (FLW) (ZNQ)

**ORDER**

This matter comes before the Court upon Defendants Steven and Margery Weiner's (collectively, the "Weiners") Motion for a 30-Day Enlargement of Time to Conduct the Rule 55(b) Hearing and an In-Person Default Hearing (the "Motion"). (ECF No. 43.)<sup>1</sup> The Motion is unopposed.

The United States filed this action against the Weiners on November 9, 2018, seeking the recovery of unpaid federal income taxes, (Compl. ¶¶ 9–10, ECF No. 1.) The following month, Loancare, LLC, ("Loancare") initiated a state mortgage foreclosure action against the Weiners and a number of other defendants with an interest in their property at 589 Westwood Avenue, Long Branch, New Jersey, including the United States. (Notice of Removal Ex., at 1, 5–7, *Loancare, LLC v. Weiner*, No. 19-9817, ECF No. 1-3.) The United States removed the foreclosure action to this Court in April 2019, (Notice of Removal, *Loancare, LLC*, No. 19-9817, ECF No. 1), and the two cases were consolidated, (July 23, 2019, Stipulation and Order, ECF No. 20).

The Weiners were served on December 3, 2018. (Proof of Service for Steven Weiner, ECF No. 3; Proof of Service for Margery Weiner, ECF No. 4.) The United States filed its Second

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<sup>1</sup> Unless otherwise noted, all citations to the record refer to the lead case, *Unites States v. Weiner*, No. 18-16034.

Amended Complaint on August 20, 2019. (ECF No. 25.) With no Answer or appearance by the Weiners, on October 1, 2019, the United States requested the Clerk of the Court enter default against them, (ECF No. 34), which was entered the next day. Four months later, and with no appearance by the Weiners, the United States moved for default judgment, (ECF No. 41), which is currently pending before the Court. On February 28, 2020, the Weiners appeared and filed their instant Motion.

The Weiners seek a thirty-day extension of time to file a motion to set aside default or, in the alternative, for an in-person default hearing. (Moving Br. 1, ECF No. 43-1.) They assert that the Internal Revenue Service (“IRS”) holds third priority if the Weiners’ home is foreclosed on and stands to recover only \$25,000. (*Id.* at 2.) The Weiners claim they have reached or are reaching settlement with Loancare, which holds first priority, and Defendant JP Morgan Chase Bank (“Chase”), which holds second priority. (*Id.*) They request the thirty-day extension to pursue a settlement with the United States. (*Id.* at 1.) The Weiners assert they were “somewhat” diligent, explaining that they worked with an attorney at a Florida-based firm who spoke to a representative for the United States on the Weiners’ behalf and planned to enter an appearance in this case, but never did. (*Id.* at 2–3.) They also ask the Court to be mindful that the Weiners are in their seventies and that foreclosure would leave them homeless. (*Id.* at 5.) Further, the Weiners state there is an open question as to whether the IRS can obtain the trust fund recovery penalty taxes it seeks because the United States’ declaration does not state the IRS received supervisory approval in accord with 26 U.S.C. § 6751. (*Id.* at 3.)

Considering the circumstances outlined above, that the Motion is unopposed, and finding good cause,

**IT IS** on this 13<sup>th</sup> day of April, 2020 **ORDERED** that:

1. The Weiners' Motion (ECF No. 43) is **GRANTED**, in part, and **DENIED**, in part.
2. The Weiners' request for an extension of time to file a Motion to Set Aside Default is **GRANTED**; the Weiners shall have until May 8, 2020, to file their Motion to Set Aside Default.
3. The Weiners' alternative request for an in-person default hearing is **DENIED**.
4. The United States' Motion for Default Judgment (ECF No. 41) is **TERMINATED**; the United States may refile or reinstate its Motion for Default Judgment if this Court ultimately denies the Weiners' forthcoming Motion to Set Aside Default, or if they fail to file it.

/s/ Zahid N. Quraishi  
**ZAHID N. QURAISHI**  
**UNITED STATES MAGISTRATE JUDGE**